

1 of AOL and Time Warner would go a long way towards ending
2 this chicken and egg problem. Built on open platforms, AOL
3 TV can help to jump start an entirely new industry, with
4 many competitors. There are many other areas where we hope
5 to spur innovation, such as finance, healthcare,
6 telecommunications and online music.

7 With music, for example, we believe that AOL's
8 experience in making interactive services easy and secure,
9 combined with Time Warner's skill at providing music attuned
10 to consumer tastes, will speed the advent of digital
11 downloading that both protects artists and service providers
12 for the benefit of consumers. So let me be clear. A
13 combined AOL Time Warner will be able to stimulate even more
14 innovation and competition, and consumers will be the
15 winners.

16 The second point. Our merger will further benefit
17 consumers by increasing their choices. In today's
18 competitive environment, consumers know they have choices --
19 over 7,000 ISPs, millions of Web pages, and new ways of
20 connecting to the Internet -- and consumers exercise that
21 power every day. That's what our AOL anywhere strategy is
22 all about. Making AOL available whenever and however
23 consumers want it.

24 Beyond the Time Warner cable systems, AOL has
25 already formed alliances with DSL, wireless, and satellite

1 providers from Bell Atlantic and SBC to Sprint and Hughes.
2 A combined AOL Time Warner could carry on these agreements
3 and seek new opportunities to distribute our content and
4 communications services on multiple platforms nationwide.
5 And you can be assured that if and when other platforms are
6 developed, AOL will want to be on those as well.

7 At AOL, we are also deeply committed to delivering
8 access to a broad array of the best content available,
9 regardless of who produces it. This will be true in a post-
10 merger world, just as it is true today. It has been
11 suggested that a combined AOL Time Warner might somehow
12 favor our content over that of our competitors through
13 caching or some other technical means. So again, let me be
14 very clear.

15 AOL has never done anything like that and we never
16 under, because it would diminish our members' online
17 experience. For those same reasons, a combined AOL Time
18 Warner would build on our companies' demonstrated commitment
19 to open access. Real progress has been made on this issue
20 in the past couple years. I have always been a believer in
21 open access, and I'm proud of the role AOL has played in
22 getting us, and increasingly the marketplace at large, to
23 where we are today.

24 It is gratifying to see that most of the country's
25 largest cable companies, including Time Warner and AT&T, are

1 moving forward with open access policies and implementation
2 plans. On the day we announced our merger, we committed to
3 open Time Warner's cable network for competition with
4 multiple ISPs. A month later, we took the next step,
5 jointly releasing a memorandum of understanding that is the
6 framework for delivering AOL and other ISPs over Time Warner
7 cable.

8 As Gerry will talk about in a minute, we are
9 increasingly optimistic about how soon we will have a
10 multiple ISP environment on the Time Warner cable systems.
11 We understand that the Commission will be taking an
12 industrywide look at the open access issue, and we want to
13 assure you that we will be continuing our own efforts to
14 ensure that there really is real choice among ISPs as
15 quickly as possible.

16 So again, let me be clear. The cable systems in a
17 combined AOL Time Warner will not discriminate against other
18 ISP's on the basis of affiliation with us. We are serious
19 about our commitment to open access, because we know it is
20 good for our business and good for consumers. The same pro
21 consumer attitude has guided our business practice on other
22 products, like instant messaging. This is probably the area
23 where the most misinformation has been circulating, so I'd
24 like to take a moment to set the record straight.

25 Let me start at the beginning. We developed

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1 instant messaging technology and introduced it as a feature
2 over a decade ago. As our members realized the value of
3 realtime online communication, they began asking to reach
4 beyond the community of AOL members, so three years ago we
5 made instant messaging freely available to all Internet
6 users. Today, we can clearly see the innovation that our
7 decision helped to spur. There are now more than 40
8 companies, including Microsoft, Yahoo and AT&T that are
9 providing their customers with similar features.

10 CHAIRMAN KENNARD: Mr. Case, could you please wrap
11 it up.

12 MR. CASE: I don't have to tell anyone in this
13 room that the challenge we all face now is to create server-
14 to-server interoperability that allows users of all these
15 different services to talk to each other seamlessly. To
16 that end, AOL has taken several steps forward. Indeed,
17 we've recently submitted to the IETF the only architectural
18 plan for true interoperability, and we are committed to
19 moving forward with interoperability.

20 It's a problem the industry has faced together
21 before when standards for e-mail interoperability were
22 devised, and we weren't even dealing then with the challenge
23 of realtime communications, but we learned from that process
24 that interoperability alone isn't enough. We must also take
25 steps to protect people's privacy and security. This is

1 especially true for AOL, where so many of our users are
2 families and young people and, therefore, where the risk of
3 privacy breaches and inappropriate spam are the greatest.

4 Let me again be very clear. We are fully
5 committed to working within our industry to create true
6 server-to-server interoperability, but we are equally
7 committed to protecting consumer privacy and security. We
8 have an opportunity to get it right this time, and we intend
9 to make the most of that opportunity.

10 Finally -- and I'll wrap up --

11 CHAIRMAN KENNARD: I hope so.

12 MR. CASE: Because this is an important one. I
13 think it's particularly important to you, Chairman. We
14 believe our merger gives us the opportunity and the
15 responsibility to help extend the benefits of the Internet
16 to every community around the world. We all know that the
17 future is about more than bytes or bandwidth. It is about
18 how we use new technology to improve people's lives.

19 In fact, nothing has been more crucial to this
20 effort in terms of integrating our companies than our shared
21 commitment to be a catalyst for meaningful change, not only
22 in our companies and our industries but also in our
23 communities locally and globally. And there's no more
24 urgent task before us than bridging the digital divide. One
25 of the things Gerry and I are most looking forward to do is

1 joining our resources and sharing our ideas to expand
2 digital opportunity to all communities.

3 We take this challenge seriously, not only as a
4 company but also as individuals with a shared personal
5 conviction that we must use our leadership to build a better
6 world. These are commitments that will drive and the
7 principle that will guide a combined AOL Time Warner. Our
8 goal is to be able to look back on this time and say we
9 helped create a medium that had a positive impact on
10 people's lives, and that, we think, will most assuredly
11 serve the public interest we are all committed to upholding.
12 Thank you.

13 CHAIRMAN KENNARD: Thank you, Mr. Case. Mr.
14 Levin?

15 MR. LEVIN: Chairman Kennard, Commissioners, last
16 January when Steve and I announced this merger, it was with
17 the vision of creating the first Internet-powered media and
18 communications company. In the short time since then, the
19 velocity of technological change has continued to accelerate
20 and only reinforces our confidence in the promise of this
21 new venture. From Time Warner's perspective, this merger
22 represents a very logical step in our efforts to increase
23 consumer choice in communication services and content, which
24 we understand is the Commission's bedrock policy.

25 Expanding consumer choice is a part of who we are.

1 It's as basic to our corporate DNA as editorial independence
2 and integrity has been to Henry Luce's Time, Inc., and Ted
3 Turner's CNN. Since HBO's debut 28 years ago, Time Warner
4 has been a leader in overthrowing the paradigm that limited
5 the public's programming choices to those selected by a
6 triopoly of broadcast networks. Our leadership in expanding
7 consumer choice in the television marketplace has proven
8 quite successful. The new networks we've developed from CNN
9 to TNT to the Cartoon Network have enriched people's options
10 for more programming.

11 And the billions we've invested in our cable
12 systems have dramatically enlarged the number of channels,
13 not just from Time Warner but from a wide variety of
14 sources. This includes MSNBC and FOX, public affairs from
15 CSPAN, innovative kids' television from Nickelodeon and
16 Disney, ethnic and gender-focused programming from BET and
17 Lifetime. It also extends to Time Warner Cable's successful
18 introduction of 24-hour local news services in a number of
19 our systems.

20 And while we're proud of our role in breaking open
21 the television universe, we also recognize that we've been
22 one of the first to take advantage of digital technology to
23 present revolutionary new options like high-speed
24 interactive services, video on demand, telephony and data
25 delivery. Our early experiments going all the way back to

1 Cube, in Columbus, Ohio, Quantum, in Queens, New York,
2 presage our effort to establish the first fully interactive
3 digital network in Orlando, Florida. And over the past five
4 years, we've invested more than \$6 billion in the
5 development and deployment of broadband architecture.

6 So whatever the delivery mechanism, whether wired
7 or wireless, cable or satellite, it's obvious that the
8 digital revolution has put the global economy in general and
9 the global media industry, in particular, on fast forward.
10 We now see that, while we began with America's leadership,
11 that leadership is already being challenged in Europe, Asia
12 and Latin America. And it was that shared understanding of
13 the intense global competition that the Internet is spawning
14 which helped give our initial conversations the sense of
15 real urgency.

16 We also recognize the opportunity to create a
17 company specially adapted to the uncharted terrain. One
18 that can offer consumers an astounding array of quality
19 content from the widest selection of sources, along with Web
20 features, services and communities that provide ease,
21 convenience and personalization. Let me be very particular
22 to the Commission about the three things that we think you
23 should focus on, which are the public benefits which flow
24 from this combination.

25 First, as well as making traditional media more

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1 accessible for online and interactive applications, our
2 company will be a leader in developing new services,
3 including news and lifestyle information on demand and
4 interactive television, and this will help accelerate our
5 competitors' efforts to innovate.

6 Second, by actively pursuing our
7 marketplace-driven multiple ISP initiative, we'll ensure
8 real consumer choice on our cable systems, but importantly
9 provide a catalyst for other cable companies to follow suit.
10 And third, as we speed up deployment of broadband capacity,
11 we will increase the consumers' appetite for broadband
12 services and clearly hasten deployment across competing
13 platforms, whether that's cable, DSL, wireless or satellite,
14 which we believe is a critical FCC goal, pursuant to Section
15 706 of the '96 Telecommunications Act.

16 The merger of Time Warner will be especially
17 beneficial to bring the public real diversity of Internet
18 service providers, and we are committed to making our
19 services available on a nonexclusive basis over a
20 multiplicity of platforms. Our company will promote a
21 competitive environment, which encourages all broadband
22 platforms. We will also carry out the initiative
23 articulated in our memorandum of understanding.

24 This is what we've already done. We've already
25 moved to restructure our Road Runner partnership, thus

1 enabling us to introduce multiple ISPs substantially in
2 advance of the 18 months remaining on the Road Runner
3 exclusivity. In addition, we are negotiating with AOL and,
4 importantly, with other ISPs, about providing high-speed
5 Internet service. And finally, in our Columbus, Ohio
6 system, we have begun technical trials providing multiple
7 ISP service. And we've, therefore, taken our commitment
8 from the ideal to the practical.

9 And by doing this, we've prompted other cable
10 operators to modify their business plans to provide for
11 multiple ISPs, and you can see already that in DSL,
12 satellite and wireless, all these providers are accelerating
13 their own deployment. So, from the consumers' point of
14 view, we're providing and stimulating more choice, better
15 value and lower prices.

16 Finally, no medium in history has surpassed the
17 wildly democratic potential of the Internet to break down
18 the barriers to human communication or to overturn the
19 limits on cross-cultural understanding and expand the
20 educational and economic prerogatives of people everywhere,
21 because the Internet, which cannot be controlled by any
22 company or any government agency, is the technology of human
23 freedom. So it is our hope that we can bring about and
24 stimulate this revolution, a hope I believe we hold in
25 common with the Commission. Thank you.

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1 CHAIRMAN KENNARD: Thank you, Mr. Levin. We'll
2 now have a period for questioning from the Commissioners. I
3 had a couple of questions I want to begin with. My first
4 question is about the cable access issue. It's one that we
5 have been grappling with here at the Commission for about
6 two years, and we have -- as I said in my opening remarks,
7 we all believe in openness. Obviously, it's been good for
8 the Internet and it's important for the future of the
9 Internet as we move to broadband, but thus far, we've heard
10 a lot of good intentions.

11 We've seen some industry agreements, nonbinding
12 industry agreements, I might add. We've seen some technical
13 trials. But it's my belief that until we actually see an
14 open access platform in cable broadband implemented where
15 people can actually see it and touch it and feel it and the
16 ISP community can actually get confidence that they'll have
17 access to it, that there will continue to be a lot of
18 skepticism on this issue, for good reason.

19 I would like to ask you, when can we expect to see
20 this? When can we expect to see an open access platform in
21 cable broadband that will give us some confidence that this
22 is really going to happen? That the market is driving
23 toward this.

24 MR. LEVIN: Well, first of all, Mr. Chairman, we
25 are trying to roll back the exclusivity bar to beginning

1 multiple ISPs that was intrinsic in the Road Runner
2 partnership, and we have begun that restructuring, and I am
3 confident, although it requires the consent of all the
4 parties, that we will achieve that so that we don't have to
5 wait 18 months before we can actually begin. And I would
6 hope by the end of the year we will be able to do that.

7 Secondly, we are entering into
8 multiple-affiliation agreements with third-party ISPs, and I
9 expect shortly we will make the announcement about the first
10 third-party affiliation agreement which, again, will confirm
11 that marketplace template for the arrangement. And finally,
12 the trials that I've referred to are actually very important
13 because up until now the ability to install and service
14 high-speed Internet access has had to be proven in the
15 marketplace. And that activity, I think, has proceeded
16 sufficiently so that we now have confidence.

17 And we have installed the first, what I'd call
18 multiple-ISP router in Columbus, Ohio. The trials have
19 begun, and I'm optimistic that by the end of the year, we
20 will also have in place the sufficient software to enable
21 the multiple billing of ISPs. The other thing I would say,
22 Mr. Chairman, is that I do think the understanding that was
23 signed between Time Warner and AOL is binding on us and, in
24 fact, it made several breakthroughs that I think are quite
25 significant. And that's where our activity, I think, will

1 lead the industry in several respects. And we are now
2 embedding those provisions into our affiliation agreements.

3 MR. CASE: If I could just add, I think, you know,
4 from some of our previous discussions, that I share your
5 passion about the importance of open access in terms of
6 preserving the open character of the Internet, and also
7 would share your skepticism that until it's actually
8 happening, it sounds like a lot of promises. But I would
9 note that a year ago, when the Commission looked at this,
10 the Commission concluded at that time that there was a
11 reasonable probability of competition in broadband. It
12 wasn't just about cable. DSL, satellite, wireless would
13 emerge as alternatives. And there was a reasonable
14 probability that the marketplace would indeed work.

15 In the past year, I think there's a lot of
16 evidence to suggest both premises were correct. There is
17 far more competition now in each of these other broadband
18 technologies, billions of dollars now being invested to
19 deploy DSL, experiments now being put in place to actually
20 deliver video over DSL. Just last week, Blockbuster
21 announced an initiative to do just that with DSL and phone
22 companies. Satellite companies have done quite a bit,
23 announcing ventures with other ISPs just in the last few
24 weeks.

25 And venture capital is pouring into wireless

1 technologies. And also in the past year, the cable industry
2 overall has gone from a position where they really weren't
3 focused on open access to a position where, now, the
4 majority of the companies are recognizing that it is
5 something that's going to happen and it's better to happen
6 sooner rather than later and it's in their business interest
7 to get ISPs working on their platform, as opposed to a
8 competing platform.

9 So in the past year, I think there's a lot of
10 evidence to suggest that there are competing broadband
11 technologies and the cable industry is moving towards open
12 access. And we recognize that people really are eager to
13 see some definitive agreements and see some systems in
14 place, and we're confident we'll be able to demonstrate that
15 very shortly.

16 MR. LEVIN: It really is the marketplace at work.
17 I just want to underscore. This is not to satisfy a
18 regulatory requirement. The intense activity, particularly
19 in DSL, both from marketing and the provision of services,
20 is really extraordinary, and for a cable operator not to
21 energetically move to provide consumer choice, the cable
22 system will lose out in the marketplace. That's very clear.

23 CHAIRMAN KENNARD: Well, I think that everyone in
24 this room would hope that we have an environment sooner
25 rather than later where we have multiple broadband platforms

1 competing in the marketplace. Cable, DSL, satellite,
2 terrestrial wireless. But what if our hopes aren't
3 realized? What if there are communities in America where
4 their only choice for broadband will be the cable modem
5 product? Will people in those communities have confidence
6 that the market will drive to an open access environment
7 when there are no broadband competitors?

8 MR. LEVIN: Well, I don't think factually that can
9 occur because, first of all, with respect to the telephone
10 system, which is universally available, DSL is being
11 activated broadly. And you can just see it in the marketing
12 activity, so that in almost every community that certainly,
13 we operate in, there is an intense DSL activity. Secondly,
14 satellite, which is universal, covers the entire geography
15 of the United States, is now offering high-speed service and
16 in fact is using either a telephone return path or, shortly,
17 a satellite return path.

18 And finally, I would not underestimate the growth
19 of wireless, because in fact, the ability to have -- and we
20 see this happening already in Europe and in Asia -- the
21 ability to have Internet access, including with impending
22 3-G, to have broadband access on a portable device, is
23 probably -- all you have to do is test the marketplace. The
24 highest infrastructure valuations today happen to be in the
25 wireless area because of the opportunity for broadband

1 wireless.

2 MR. CASE: If I could just add that the -- we made
3 a big investment in satellite, partly because it is the only
4 way to ensure ubiquity in terms of the national footprint.
5 We're working with Hughes on that project, and even with
6 this merger will continue to work with them and others to
7 develop all these different technologies, so I don't think
8 the concern you have is likely to play out. But if it does,
9 if down the road you find that there really is only one
10 broadband technology and the industry isn't moving
11 forcefully enough to open it up, it would be appropriate for
12 the Commissioner or others to look at that issue and put a
13 national policy in place.

14 As it relates to this merger, these are the
15 companies that are actually doing things about open access.
16 I think the steps we've taken should be applauded, and we
17 really are committed to going from the concept stage to the
18 reality stage, not just around cable broadband technology
19 but also deploying other broadband technologies.

20 CHAIRMAN KENNARD: Okay. Well, it's, just so I
21 understand what you're both saying. Absent a competitive
22 dynamic, absent pressure, competitive pressure from other
23 broadband providers, I understand you to say that there may
24 not be pressure for a market-driven incentive for the cable
25 operator to open their, their broadband platform. Is that

1 right?

2 MR. LEVIN: No, no, no. I wouldn't, I wouldn't
3 articulate it that way. First of all, it is clear that
4 there are going to be multiple broadband providers. But as
5 a matter of business development for the cable system, the
6 importance of developing these new revenue streams, given
7 the fact that the more traditional analog delivery of
8 television signals, or indeed digital delivery of must-carry
9 signals, has a certain ceiling on it in terms of its
10 expansion.

11 The growth opportunities for the cable company
12 really come about in, in the deployment of broadband, so I
13 can say to you that our business plan, with or without the
14 obvious competition, is to make the investment and actually
15 to accelerate the investment in broadband deployment, and
16 then the costs that are the variable costs that are
17 necessary to deliver cable modems. Again, I can't
18 underscore enough that this is a business proposition that
19 grows out of the next development, in this case, the
20 development of the cable industry, both because of the
21 competition and it makes intrinsic sense.

22 MR. CASE: One other point to emphasize is that
23 Time Warner has a significant cable presence, but only 12
24 percent of households in the United States have Time Warner
25 cable access, so 88 percent we need to reach, the national

1 brand with the AOL service through other means. So it is in
2 our interest more than probably any company's interest to
3 make sure all broadband technologies are open and
4 competitive, easy to deploy and affordable. It would be
5 silly for us to focus just on the 12 percent when we have a
6 national business and need to focus on 100 percent.

7 So it's in our interest as much as yours, maybe
8 more in our interest, to work as forcefully as we can to
9 establish arrangements with all the cable companies to
10 deploy cable broadband, as well as all the DSL companies,
11 satellite companies, wireless companies, so we really have a
12 national footprint, with a tapestry of broadband solutions.

13 MR. LEVIN: You know, history is instructive,
14 because on the one hand, having cable has been very helpful
15 in the creation of all of these services. On the other
16 hand, the history of our company, whether it's HBO, CNN or
17 pay-per-view movies, is to work through cable, satellite and
18 DSL -- any delivery system -- because that's in the nature
19 of content, which should be delivered on every platform.

20 So there's nothing new about this concept of
21 stimulating all of the delivery mechanisms, including the
22 one that Steve Case referred to in an announcement of
23 Blockbuster to use the Enron system and then, ultimately,
24 DSL, to deliver, in effect, video on demand movies into the
25 home. And you don't see any cable mentioned in that

1 release.

2 CHAIRMAN KENNARD: Thank you both. Other
3 questions from the Bench. Yes? Certainly.

4 COMMISSIONER TRISTANI: So what I'm hearing is it
5 makes wonderful, eminent business sense to have open access.
6 I'm hearing that. Can you tell me what your timetable is
7 again? Is it --

8 MR. LEVIN: Well, let me characterize it. We have
9 at our cable company -- just speaking on behalf of our cable
10 company -- what's known as a multiple-ISP initiative. And
11 we have been -- and this has been true in the industry --
12 contractually precluded from beginning to have more than one
13 ISP, because of an exclusivity provision in a partnership
14 agreement as a result of a Justice Department mandate. We
15 are trying now to reform that so that we can remove the
16 exclusivity bar. Once we do that, we then turn to the
17 technological capability.

18 So we have now installed the kind of router that's
19 necessary and the software that's needed to distinguish
20 among several ISPs for the consumer. We are now doing that.
21 And finally, you need affiliation agreements and, as a
22 matter of fact -- you know, maybe I should give my e-mail
23 address -- any ISP that would like to come and negotiate
24 with Time Warner Cable, we're open and ready, willing and
25 able.

1 COMMISSIONER TRISTANI: But what's the timetable?

2 MR. LEVIN: Well, as I just said, our -- well --

3 CHAIRMAN KENNARD: What's the e-mail address?

4 MR. LEVIN: GML --

5 COMMISSIONER TRISTANI: I'm not being flippant
6 about the timetable. I just want to have a sense of --
7 because I've heard maybe the end of the year, but could that
8 mean --

9 MR. LEVIN: Well, but as I've indicated, there is
10 a contractual bar right now. I mean if you look at -- there
11 is an exclusivity provision.

12 COMMISSIONER TRISTANI: But you said those
13 contracts could be reformed.

14 MR. LEVIN: Yes, but it requires other parties to
15 agree to do that.

16 COMMISSIONER TRISTANI: So you can't tell me what
17 a timetable is.

18 MR. LEVIN: No, I, I remain quite confident that
19 we can make that happen faster than anyone else in the
20 industry, because there's another exclusivity provision that
21 runs longer for Excite@Home. I'm confident, but I can't
22 warrant it today, but I'm confident in my ability to make
23 this happen. We've obviously already begun the process of
24 restructuring. And so that the first thing that will
25 happen.

1 Secondly, there will be affiliation agreements.
2 You need an agreement with an ISP that sets the terms and
3 conditions. It's very similar to the terms we had in our
4 MOU. And I think I said earlier that there will be an
5 announcement of an affiliation agreement shortly. Finally,
6 this is a, not a trivial technological activity and,
7 frankly, that's the reason why the industry went slowly to
8 see whether the modems would work, they could be installed,
9 whether the service would be high speed, whether you could
10 bill. We now have confidence in that management capacity.

11 Now you need software, which hasn't existed
12 before, with a router that enables you to address separate
13 ISPs going into separate homes. I'm confident that we will
14 build that software. Our company has a history of doing
15 this. We've done it. We've done it before.

16 And that's why I'm highly optimistic. But most of
17 all, it is a business imperative. It's built into our
18 business plan. Multiple ISPs are necessary for the revenue
19 growth. And besides, in every market that we're in, DSL is
20 being marketed competitively to this concept.

21 MR. CASE: If I could just add. We, as I said in
22 the opening remarks, we understand, probably better than
23 anybody, the importance of open access and also understand
24 the importance of demonstrating a real commitment to open
25 access by having real deals with real unaffiliated ISPs that

1 can be implemented in a real way, quickly. And we recognize
2 that that's an important issue to you. It's also an
3 important issue to us, because our credibility is on the
4 line.

5 I have been arguing for open access for years, and
6 I continue to believe open access is critically important.
7 We just now have the wherewithal, we believe, to achieve
8 that within Time Warner systems sooner than might have been
9 thought, because of this restructuring of Road Runner. And
10 we also are optimistic that we can get other cable companies
11 to embrace it.

12 So we need to demonstrate this quickly, and we
13 will demonstrate this quickly. Not just because we think
14 open access is a good policy decision or that open access is
15 a good business decision, but also because we recognize we
16 have made a commitment and we're going to live up to that
17 commitment.

18 COMMISSIONER NESS: Following up on that, to what
19 extent will you be limiting the number of ISPs that will be
20 able to partake of your system?

21 MR. LEVIN: Again, I'll repeat my invitation. As
22 we said in our agreement, we're not providing any limitation
23 on either the number of ISPs or whether they are national,
24 regional or local.

25 COMMISSIONER NESS: And to what extent will you be

1 making the technology available to other cable systems so
2 that others will be able to also open up their systems?

3 MR. LEVIN: Well, we're -- we are not a technology
4 company, in the sense that we make and sell technology, but
5 anything that we've developed -- for example, the paradigm,
6 the hybrid fiber coax architecture that is currently the
7 industry standard was developed by the engineers at Time
8 Warner Cable. We actually won an Emmy for it. And that
9 template, that architecture has been made freely available.
10 If -- the software that we'll be created -- what's necessary
11 here is not the router, because the routers do exist.

12 What's necessary is software that hasn't been
13 written, to distinguish that the traffic going through
14 belongs to one ISP and not another and make sure that the
15 bill goes to the proper place. That software we will
16 acquire from somebody, who will then be able to sell that
17 software. See, that's my point, that this innovation, it
18 hasn't existed before, so we're the first ones to do it.

19 By making it happen, it then travels to other
20 systems and, again, if it doesn't happen, you have, you
21 know, the telephone companies constantly spending much more
22 money on marketing in the marketplace. So I think the short
23 answer to your question is if it's developed for Time Warner
24 Cable, then others would be able to use it.

25 COMMISSIONER POWELL: Let me just ask more

1 pointedly. By the terms of the Road Runner contract, does
2 it have a natural expiration date and, if so, what is it?

3 MR. LEVIN: It's the end of 2001. December 31st,
4 2001.

5 COMMISSIONER POWELL: Okay. So at the latest,
6 pursuant to the Justice Department decree, is there a
7 timetable that shortens that?

8 MR. LEVIN: No. I'm trying to be helpful and
9 opportunistic. No. But what the Justice Department has
10 said is that AT&T must divest its interest in Road Runner so
11 that it isn't in both Excite@Home and Road Runner. And
12 frankly, what I'm saying to you is that I'm trying to take
13 that mandate and turn it around so that that event becomes
14 an event to restructure the ownership of the partnership,
15 and while we are doing that, also remove exclusivity.

16 You know, it's something that is another
17 indication of, you know, our commitment to want to make this
18 happen. Because the exclusivity on Excite@Home, I think,
19 extends until the end of 2002. So that's why, maybe, people
20 have not been rushing to enter into affiliation agreements.
21 So that's why I'm trying to do that and, as I say, once we
22 get an announcement out of a third-party affiliation
23 agreement, I think that will encourage others also.

24 MR. CASE: One other point in terms of the timing.
25 The Road Runner and @Home exclusivities also would impact

1 AOL. So, unless the Road Runner date is moved up, AOL will
2 not be able to provide access over Time Warner Cable systems
3 or any other systems, so clearly we have an interest in
4 trying to restructure this, to accelerate the date that all
5 ISPs -- AOL and other ISPs -- would have access.

6 MR. LEVIN: I should -- it's fortunate that I'm
7 accompanied by those who know better than I do -- the
8 Justice Department decree does push for an earlier
9 restructuring if that's possible, so there is an incentive
10 there.

11 COMMISSIONER FURCHTGOTT-ROTH: Would it place Time
12 Warner systems at a competitive disadvantage if this
13 Commission were to condition the license transfers in such a
14 way that Time Warner systems had a different federal mandate
15 for open access than other cable operators had?

16 MR. LEVIN: Yes. Certainly the answer to that is
17 yes.

18 CHAIRMAN KENNARD: Commissioner Powell, did you
19 have something?

20 COMMISSIONER POWELL: It was going to be a
21 question, but I'm going to make a comment, in the interest
22 of time. I've read through many, many of your testimonies
23 and your presentations, and on many of these issues that are
24 of some concern by other commentators -- commitments to
25 multiple platforms, open access to ISPs, the commitment not